BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARK A. BIRCHMEIER	)	
Claimant	)	
	)	
VS.	)	Docket No. 264,222
	)	
IBP, INC.	)	
Self-Insured Respondent	)	

ORDER

Claimant requested review of the November 26, 2003 Post-Award Medical Order Denying Medical Treatment by Administrative Law Judge Brad E. Avery. This is a post-award proceeding for medical benefits. Both parties submitted briefs and the case was placed on the December 30, 2003 summary docket for a decision without oral argument.

APPEARANCES

Roger D. Fincher of Topeka, Kansas, appeared for the claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record which includes the August 15, 2003 Post Award Hearing, the October 7, 2003 deposition of Lynn D. Ketchum, M.D., and the administrative file.

ISSUES

The Administrative Law Judge (ALJ) denied claimant medical treatment because Dr. Ketchum indicated that claimant's medical treatment is not related to the January 17, 2001 slip and fall accident, but rather from the repetitive mechanical work claimant performed not only for respondent but also for his subsequent employer, Emporia Truck and Trailer.

The claimant requests review of whether he is entitled to post-award medical treatment.

Respondent argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

It is undisputed that claimant suffered accidental injury arising out of and in the course of his employment on January 17, 2001. As he was going down steps at work, claimant slipped on ice and grabbed a handrail to stop his fall. He suffered injury to his left shoulder and diagnostic studies also revealed left carpal tunnel syndrome.

Claimant was placed on light-duty work and then his employment with respondent was terminated on February 19, 2001. Claimant noted that his condition improved during the time that he did not work. In approximately December 2001, claimant obtained employment as a welder and mechanic for Emporia Truck and Trailer which is the same type of work he performed for respondent. He noted that welding would cause neck strain and at times his neck and left arm would hurt more than when he started working for Emporia Truck and Trailer.[1]

On December 27, 2002, the ALJ signed an Agreed Award submitted by the parties. The Agreed Award provided that claimant's injuries and impairment were described in Dr. Peter V. Bieri's August 8, 2001 report which was attached to the Agreed Award. That report specifically determined claimant failed to demonstrate any cervical spine symptomatology or complaint when evaluated. Consequently, the Agreed Award provided for a 21 percent permanent partial impairment to the left shoulder. Dr. Bieri's 21 percent rating included 10 percent for entrapment neuropathy at the level of the left wrist. Claimant retained the right to apply for future medical treatment.

Claimant also had filed a worker's compensation claim against respondent alleging injury to both arms, shoulders, neck, and hands due to his repetitive work activities from January 1999 through February 1, 2001. After a preliminary hearing that claim was denied for failure to provide timely notice. The Board affirmed noting claimant's contention that he injured his bilateral upper extremities at work was supported by the evidence but that claimant failed to provide timely notice.

The claimant noted that he primarily injured his left shoulder and neck in the January 17, 2001 slip and fall incident. Claimant testified that he had been having problems with his left hand before the incident on January 17, 2001, and that the numbness comes and goes in his hand. Claimant noted his condition improved when he quit working but the pain returned to the same level after he began working for Emporia Truck and Trailer. Claimant complained that his left hand was his worst problem.

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[1]P.A.H. Trans. at 13-14.

When the claimant was examined by Dr. Lynn D. Ketchum on December 10, 2002, he filled out a form which indicated he had complaints of pain in both hands. Claimant attributed his pain to his repetitive work activities as a mechanic. Moreover, the form completed by the claimant did not mention the January 17, 2001 slip and fall incident. Dr. Ketchum concluded that claimant's repetitive work activities were more likely the cause of his current need for treatment than the injuries suffered in the slip and fall incident. And the doctor agreed that the fact claimant had similar findings in his right upper extremity supported his position that the entrapment neuropathies of the ulnar and median nerve are more likely related to the repetitive nature of claimant's work instead of the incident grabbing the handrail with one extremity.

K.S.A. 44-510k (Furse 2000) provides further medical care for a work-related injury can be ordered based upon a finding such care is necessary to cure or relieve the effects of the injury which was the subject of the underlying award.

The dispositive issue is whether claimant's present need for medical treatment is directly and naturally related to the January 17, 2001 accident. In *Nance*,[2] the Kansas Supreme Court held:

> When a primary injury under the Kansas Workers Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.[3]

The causation opinions in the post-award hearing were provided by the claimant and Dr. Ketchum. Claimant testified that his condition improved when he quit working and then his symptomatology recurred after he returned to work for a different employer. The claimant testified that his symptoms returned to the same level but he also testified that on occasion his symptoms worsened with his work activities for his new employer. And it is significant that when claimant was examined by Dr. Ketchum he attributed the problems with his upper extremities to his repetitive work activities instead of the slip and fall incident.

Dr. Ketchum concluded that claimant's continuing upper extremity problems were more probably caused by repetitive work activities than the slip and fall incident. The Board finds that Dr. Ketchum's testimony is the most persuasive and, therefore, concludes claimant developed bilateral upper extremity neuropathies of the ulnar and median nerve

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[2] *Nance v. Harvey County*, 263 Kan. 542, Syl. ¶ 4, 952 P.2d 411 (1997).

[3] *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260,505 P.2d 697 (1973).

as a result of his repetitive work activities as a mechanic. Because claimant's present need for medical treatment is not the result of the January 17, 2001 slip and fall accident, the request for additional medical benefits from respondent and its insurance carrier should be denied.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated November 26, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Anne Haught, Acting Workers Compensation Director